

1
2
3
4 UNITED STATES DISTRICT COURT

5 DISTRICT OF NEVADA

6 * * *

7 TROY RAY EMANUEL, Case No. 2:16-cv-01368-GMN-GWF

8 v. Petitioner,

9 DWIGHT NEVEN, et al., ORDER

10 Respondents.

11
12 Following upon the entry of appearance (ECF No. 21) by the Federal Public
13 Defender,

14 IT IS ORDERED that the Federal Public Defender, through Amelia Bizzaro, Esq.,
15 is appointed as counsel for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel
16 will represent petitioner in all federal proceedings related to this matter, including any
17 appeals or certiorari proceedings, unless allowed to withdraw.

18 IT FURTHER IS ORDERED that petitioner shall have until up to and including one
19 hundred twenty (120) days from entry of this order within which to file an amended petition
20 and/or seek other appropriate relief. Neither the foregoing deadline nor any extension
21 thereof signifies or will signify any implied finding as to the expiration of the federal
22 limitation period and/or of a basis for tolling during the time period established. Petitioner
23 at all times remains responsible for calculating the running of the federal limitation period
24 and timely asserting claims, without regard to any deadlines established or extensions

1 granted herein. That is, by setting a deadline to amend the petition and/or by granting
2 any extension thereof, the Court makes no finding or representation that the petition, any
3 amendments thereto, and/or any claims contained therein are not subject to dismissal as
4 untimely. See *Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

5 IT FURTHER IS ORDERED that respondents shall file a response to the amended
6 petition, including potentially by motion to dismiss, within sixty (60) days of service of an
7 amended petition and that petitioner may file a reply thereto within thirty (30) days of
8 service of the answer. The response and reply time to any motion filed by either party,
9 including a motion filed in lieu of a pleading, shall be governed instead by Local Rule LR
10 7-2(b).

11 IT FURTHER IS ORDERED that any procedural defenses raised by respondents
12 to the counseled amended petition shall be raised together in a single consolidated
13 motion to dismiss. In other words, the Court does not wish to address any procedural
14 defenses raised herein either in seriatum fashion in multiple successive motions to
15 dismiss or embedded in the answer. Procedural defenses omitted from such motion to
16 dismiss will be subject to potential waiver. Respondents shall not file a response in this
17 case that consolidates their procedural defenses, if any, with their response on the merits,
18 except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking
19 merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a)
20 they shall do so within the single motion to dismiss not in the answer; and (b) they shall
21 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set forth
22 in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural
23 defenses, including exhaustion, shall be included with the merits in an answer. All
24 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

25 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents
26

1 shall specifically cite to and address the applicable state court written decision and state
2 court record materials, if any, regarding each claim within the response as to that claim.

3 IT FURTHER IS ORDERED that any state court record and related exhibits filed
4 herein by either petitioner or respondents shall be filed with a separate index of exhibits
5 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
6 be identified by the number or numbers of the exhibits in the attachment. If the exhibits
7 filed will span more than one ECF Number in the record, the first document under each
8 successive ECF Number shall be either another copy of the index, a volume cover page,
9 or some other document serving as a filler, so that each exhibit under the ECF Number
10 thereafter will be listed under an attachment number (i.e., Attachment 1, 2, etc.).

11 IT FURTHER IS ORDERED that the hard copy of any exhibits filed by either
12 counsel shall be delivered – for this case – to the Reno Clerk's Office.

13 DATED THIS 26 day of January 2018.
14

15 
16 GLORIA M. NAVARRO
17 UNITED STATES DISTRICT JUDGE